IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
LETTERS PATENT APPEAL NO.296 OF 2005
IN
WRIT PETITION NO.2431 OF 1990

Shri Raghuvir Sharad Pataskar .... Appellant
Vs.
Shri Bhujanga Dashrath Sarawade
& Ors. .... Respondents

Sarvasri S.M. Oak with A.P. Kulkarni for the Appellant.

Shri S.M. Mhamane for the Respondent No.1.

Shri S.A. Bhagwal for the Respondent Nos.2 and 3.

Shri R.M. Patne for the Respondent Nos.4 and 5.

CORAM: R.M.S. KHANDEPARKAR &
Mrs. ROSHAN DALVI, JJ.

DATED: MARCH 20, 2006

P.C:

1. Heard. The appellant challenges the order passed by the learned single Judge on 21-3-2005 in Writ Petition No.2431 of 1990. By the impugned order, the learned single Judge has set aside the order passed by the School Tribunal at Pune on 22-2-1990 in Appeal No.132 of 1988. The learned single Judge has held that the appellant, though belonged to the open category candidate, was appointed in a ‘reserved’ vacancy for one year only at a time during two consecutive years. He was a temporary employee and not on probation. Being

so, the judgment of the Tribunal which directed permanency to the appellant in the said post has been set aside. The Tribunal by its judgment had held that the appellant was appointed in unreserved vacancy and not in a reserved vacancy and his appointment was on probation basis and not as a temporary employee.

2. Undisputedly, the records reveal that advertisements were issued for filling up of the vacancy for the post of lecturer in English for the year 1986-87 as well as for the year 1987-88 and the post was meant for the reserved category candidate. However, on account of non-availability of reserved category candidate, the appellant was appointed on both the occasions and every time his appointment was for a period of one year. The approval granted by the competent authority was also for one year on each occasion. It is also a matter of record that the Tribunal after examining the provision regarding hundred percent roster register came to the conclusion that there was a backlog of two SC and three ST candidates and surplus of five OBC candidates during the academic year 1986-87. It was also held by the Tribunal that four posts out of the eight new posts were filled during the academic year 1986-87 which were liable to be treated as unreserved posts. Having held so and after taking note of the decisions of the Apex Court in **M.R. Balaji v. State of Mysore** {AIR 1963 SC

49}, **Devdasan v. Union of India** {AIR 1964 SC 179}, **A.B.S. Karmachari Sangh v. Union of India** {AIR 1981 SC 298} and **Gopalkrishna v. State of Maharashtra** {1987 Mh.L.J. 655}, the last one being of the Full Bench of this Court, the Tribunal surprisingly held that the vacancy held by a trained person should be treated as an open category vacancy and the vacancy held by an untrained person should be held as reserved category vacancy even though neither any provision of law nor any decision of the Apex Court or of this Court lays down any such proposition. On the basis of such novel proposition the Tribunal concluded that the appointment of the appellant should be treated as one in the open category and not in reserved vacancy.

3. Once the records apparently disclosed that the appellant was appointed purely on temporary basis for a fixed period of one year and that too, in a reserved category vacancy knowing well that the appellant does not belong to reserved category, there was no scope for the Tribunal to hold that the appellant was a probationer nor the Tribunal was justified in holding that the appellant was occupying unreserved vacancy. Undisputedly, the appellant had accepted the post in the reserved category and the same was approved by the competent authority every time for one year. After the expiry of the period of one year, for the academic year

1987-88, there was no occasion for the management to terminate the services of the appellant as the services of the appellant were engaged only for one year temporarily, and the same came to an end with the expiry of the academic year 1987-88. Consequently, there was no termination of the services as such.

4. Considering the facts and circumstances of the case and the correct application of law to those facts by the learned single Judge, no fault can be found with the impugned order. Apparently, the Tribunal had exceeded its jurisdiction by virtually inventing a new case for the appellant beyond the scope of his plea before the Tribunal itself. It was never the case of the appellant that the appellant was appointed in the open category permanent vacancy. His only claim was that he was entitled for permanency for having completed two years in employment of the respondents, totally ignoring the fact that the appointment of the appellant was initially for one year and again for one year, without being selected for appointment in any permanent post in the open category. Hence, no fault can be found with the impugned order and it does not call for any interference therein. Hence the appeal is summarily dismissed.

(Mrs. Roshan Dalvi, J.) (R.M.S.Khandeparkar, J.)

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